IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/03/2003

CORAM

THE HONOURABLE MR.JUSTICE N. DHINAKAR
AND
THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN

R.T. No. 2 of 2003 and CRL.APPEAL No.204/2003

R.T. No. 2/2003

Additional Sessions Judge-
cum-Chief Judicial
Magistrate, Tuticorin. ..Referring Officer

-Vs-

1. Shankara Narayan
2. Santhanapandi
3. Saravanan ..Respondents

C.A. No.204/2003
1. Shankara Narayan
2. Santhanapandi
3. Saravanan ..Appellants

Vs.

State rep. by the
Inspector of Police,
Ettayapuram Police
Station, Tuticorin
District.
(Crime No.154/2000) ..Respondent

Prayer: Referred trial for confirmation of death sentence passed by judgment dated 8.1.2003 in S.C.No.514/2001 on the file of the Additional Sessions Judge-cum-Chief Judicial Magistrate,Tuticorin and Criminal Appeal by the accused in S.C.No.514/2001 against the same judgment.

!For Appellants in
C.A.No.204/2003/
Respondents in R.T.
No.2/2003 :: Mr.O. Venkatachalam
and

Mr.N.Doraiswamy
^For Respondent in
C.A.No.204/2003 :: Mr.I. Subramanian,
Public Prosecutor

:J U D G M E N T

(Judgment of the Court was delivered by R.BALASUBRAMANIAN,J)
The appellants in the appeal stand convicted in S.C. No. 514/2001 on the file of the Additional Court of Sessions, Tuticorin, for offences under Section 302 r/w Section 34 I.P.C. (5 counts) and Section 307 r/w Section 34 I.P.C. For the offence of murder, each one of them stands sentenced to be hanged till their death and for the other offence, each one of them stands sentenced to undergo 7 years RI. Consequent to imposing death sentence, the Court of Sessions made a reference to this Court and it is R.T. No.2/2003. The convicted accused have also filed a separate appeal namely C.A. No. 204/2003. Since both the proceedings arise out of one sessions case, we are inclined to dispose of the same by this common judgment. Heard the learned counsel on either side.

2. For convenience sake, we will refer to the five deceased in this case D-1, D-2, D-3, D-4 and D-5. D-5 is the wife of D-1 and D-4 is their daughter. D-2 is the younger brother of D-1 while D-3 is the brother of D-4. A-1 to A-3 are brothers. A-3 is the husband of D-4. The case of the prosecution is that at 7.15a.m. on 30.8.2000, when all the deceased along with P.W.s 1 to 3 and a few others went to the village of the accused to unite A-3 and his wife D-4, all the accused sharing the common intention, fatally attacked the five persons, out of whom four died on the spot while one died in the hospital, a few days later. In the course of the same transaction, they also made an attempt on the life of P.W.2 and he luckily survived. To substantiate the charge, the prosecution examined three witnesses as eyewitnesses to the occurrence, out of whom, P.W.2 is an injured eye-witness. Let us summarise in short here under the oral evidence of P.W.1:
"D-1 is his brother-in-law; all the accused are known to him and they reside at Thalaikattupuram; Maheswari  D-4 is the daughter of D-1; about three years prior to the occurrence, marriage between A-3 and Maheswari took place; they were living together for about 7 or 8 months and even during that time, the spouses were quarrelling; this made D-4 leave her matrimonial abode and take shelter under her father; D-1, with a view to bring peace between the spouses, asked P.W.5 to mediate; P.W.5 told D-1 to send his daughter; however, D-1 insisted that unless A-3 comes, he will not send his daughter; P.W.5 is the junior paternal uncle of the accused; the witness along with P.W.5 went to Thalaikattupuram to ask A-3 to come to D-1's house and take his wife with him; On the way, A-3 was seen in the bus-stand and when he was asked to come and take his wife, he refused stating that they can send his wife on their own; this was informed to D-1; a few days later, D-4 was sent in the company of P.W.2 and D-5 to Thalaikattupuram; later, one Muthiah of Sadanandapuram died; A-3's sister had been given in marriage to Muthiah's son; therefore, A-3 was asked to come for condolence; P.W.2 went to inform A-3 about that; A-3 told P.W.2 that he will not come and signing in a white paper told P.W.2 to take

Maheswari with him; P.W.2 refused to take D-4 and returned to the village; D-1 and D-5, four days later, went to Thalaikattupuram and at that time, D-4 informed them that she cannot live any more at Thalaikattupuram as she was subjected to cruelty and harassment; D-1 and D-5 informed D-4 that they will bring elderly people from their village and try to settle her life with her husband and even after that, if A-3 is not coming around, then a complaint can be given at the Ettayapuram Police Station; on the morning of 30.8.2000(the date of occurrence), all the five deceased along with a few more left in a van driven by P.W.4 to Thalaikattupuram; totally 13 people travelled in that van; they had coffee around 7 or 7.15a.m. at Kovilpatti and then reached Thalaikattupuram where the vehicle was parked south of the house of A-1; the witness went to get P.W.5 and P.W.5 accordingly accompanied him; they were conversing among themselves as to how the problem between A-3 and D-4 could be solved; when the witness and P.W.5 went inside the house of A-1 with A-3, A-1 and A-2 were standing outside the house. When the witness and P.W.5 were talking with A-3, they heard somebody shouting "stab, cut"; immediately, A-3 took an Aruval with him and ran out of the house; this made the witness also to come out and see what was happening; at that time, D-1 was found running towards north chased by A-1 and A-2. A-1 and A-2 were also armed with weapons; A-3 also followed them with the weapon in his hand; north of A-1's house, near the ration shop, D-1 was indiscriminately attacked by A-2, A-3, A-1 and A-3 again; P.W.2 stating that his brother is being cut, tried to save him; A-1 attacked P.W.2 on his right hand; at that time, D-2 intervened stating that his brother had been cut; A-1 did not spare him and cut him on his back with the weapon; D-3, who was also nearby was also attacked by A-1, A-3 and A-2; D-3 died on the spot; Maheswari-D-4 came running stating that her brother had been cut; she was cut by A-3 followed by A-1 and A-2 on various parts of her body; she also died on the spot; frightened D-5 ran for safety and she was stabbed by A-1 followed A-3, A-2 and again by A-1; she also died on the spot; all the accused ran away with the weapons in their hands for safety; he saw P.W.2 and Gurusamy, since deceased (D-2) with injuries. Gurusamy could not walk; he was carried by him, P.W.3 and others and brought to the main road; on seeing the occurrence, P.W.4, who was driving the van in which the witnesses and the deceased came, took his vehicle and drove it away; a bus from Vilathikulam towards Ettayapuram came in which Gurusamy, since deceased, and P.W.2 were taken to the Police Station; P.W.19, the Sub-Inspector of Police was there before whom P.W.1 narrated the incident; then injured P.W.2 and Gurusamy were sent to the hospital and then P.W.19 took a complaint from P.W.1; he wrote down the complaint to the narration of P.W.1 in which P.W.1 signed; Ex-P1 is the said complaint. Gurusamy, since deceased, died in the Government Hospital on 16.9.2000. In the spot itself, Muthusamy  D-1, Sundaramoorthy  D-3, Maheswari  D-4 and Guruvathai  D-5 died and their bodies were lying in the same place; M.O.s 1 to 3 are the weapons of offence used by the accused."

On the occurrence proper, we have the evidence of P.W.s 2 and 3 in total corroboration to the oral evidence of P.W.1. Besides, P.W.2 had also given evidence as to how he came to sustain injuries and at whose hands. The circumstances under which P.W.2 had come to sustain the injuries had been spoken to by P.W.s 1 and 3. P.W.4 is the van driver, in which van, the deceased, witnesses and others came to Thalaikattupuram by leaving their village at 4 a.m. on 30.8.2000. He would state that all of them alighted

near the house of A-1 and within 10 minutes thereafter, he heard a distress cry that somebody is being cut and he immediately left the place in his van.

3. P.W.19 is the Sub-Inspector of Police in the investigating Police Station. At 8.30a.m. on 30.8.2000, P.W.1 appeared before him and gave an oral complaint, which he reduced into writing. He had taken his signature in it and he registered it as Ex-P1 in Crime No. 154/200 0 for offences under Sections 302 and 307 I.P.C. He prepared Ex-P1 5, the printed First Information Report. He sent the material records to the Court as well as to the higher officials. P.W.20 is the Investigating Officer, who took up investigation immediately on collecting the material records at about 9.30a.m. on 10.8.2000. He reached the scene of occurrence where he found the dead body of Muthusamy (D-1 ) lying on the road. In the presence of P.W.9 and another, he prepared the Observation Mahazar  Ex-P16 for that place and Ex-P36-the rough sketch. By examining P.W.1 and others and in the presence of panchayatars, between 10.15a.m. and 11.15a.m., he conducted inquest over the dead body of Muthusamy (D-1). Ex-P37 is the Inquest Report. He sent the dead body through a police constable for postmortem. At 11.30a.m. on the same day, in the presence of witnesses, he recovered bloodstained earth and sample earth and a broken stick from the place where the body of Muthusamy was lying on the ground. He also noticed that the dead bodies of Sundaramoorthy, Maheswari and Guruvathai were lying on the same road separated by a short distance. In the presence of the same witnesses, he prepared Ex-P18, the Observation Mahazar and Ex-P38, the rough sketch in respect of the place where the three bodies referred to above were found lying. In the presence of the same witnesses, he conducted inquest between 12.30p.m. and 1.45p.m. on that day on the dead body of D-3 and prepared Ex-P39, the Inquest Report. Then, he sent the dead body through a police constable for postmortem. Over the dead body of D-4, he conducted inquest between 1.4 5p.m. and 3.10p.m. in the presence of the same witnesses and panchayatars and prepared Ex-P40, the Inquest Report. Then, he sent the dead body for postmortem through a police constable. In the presence of the same witnesses and panchayatars, he conducted inquest between 3.3 0p.m. and 4.30p.m. on the same day over the dead body of D-5 and prepared Ex-P41, the Inquest Report. Then, he sent that dead body also for postmortem through a police constable.

4. P.W.13 is the police constable, who was present during postmortem on D-1. After postmortem, he removed M.O.s 14 to 19 from the dead body and handed over the same to the Investigating Officer. P.W.14 is the police constable, who was present throughout postmortem done on D-3 and after postmortem, he removed M.O.s 20 to 23 from the dead body and handed over the same to the Investigating Officer. Likewise, P.W.15 is the constable, who was present throughout the postmortem on D-4 and after postmortem, he removed M.O.s 24 to 32 from the dead body and handed over the same to the Investigating Officer. P.W.16 is the last of the four police constables, who was present throughout the postmortem done on D-5 and after postmortem, he removed M.O.s 33 to 40 from the dead body and handed over the same to the Investigating Officer. P.W.6 is the doctor, who did postmortem on the respective dead bodies of D-1, D-3, D-4 and D-5 on receipt of Exs-P2, P4, P6 and P8 requisitions brought by the respective police constables. During postmortem on the body of D-1, she found various symptoms as noted in Ex-P3,

the postmortem report. The Doctor is of the opinion that the deceased would appear to have died of the cumulative effect of shock and haemorrhage due to the injuries sustained. Injury No.4 is fatal in nature. The symptoms as noted by the doctor are as follows:
"Injuries:-
1. A cut injury right side of face about 4cm x 3 cm x 3cms. cutting muscle underneath.
2. A cut injury just below injury No.1 over right mandibular region about 12 cm x 5 cm x 5 cm lacerating the muscles and fracturing the bone underneath.
3. A cut injury 2 cms above injury No.1 starting from right maxillary region extending to the nose and cutting it in middle about 9 cm x 4 cm x 3 cms lacerating the muscles and fracturing the bones underneath.
4. A cut injury right side of neck about 15 cm x 8 cm x 9 cm severing the muscles, blood vessels, nerves and cervical vertebral with spinal cord at c4 level.
5. A cut injury is behind right ear about 10 cm x 3 cm upto bone depth fracturing it.
6. A cut injury over left elbow, Totally severing the joint bones muscles on lateral aspect, blood vessels and nerves leaving. Skin and muscles on medial aspect.
7. A cut injury over dorsal aspect of right wrist about 3 cm x 2 cm x 1 cm.
8. A cut injury 1" below injury No.7 over right hand about 6 cm x 3 cm x 3 cm severing the tendons and fracturing the bones underneath.
Skull : Fracture of right temporal bone. Brain Normal.
Thorax: Heart empty. Lungs pale. Abdomen Stomach empty other internal organs pale.
Post-mortem concluded at 2 p.m. on 30.8.2000.
Death would have occurred 5 □ 7 hours prior to Post-mortem.

Opinion as to cause of death:
The deceased would appear to have died of the cumulative effect of shock and haemorrhage due to the injuries sustained.
Fatal injury Injury No.4"
During postmortem on the body of D-3, the doctor found various symptoms as noted by her in Ex-P5, the postmortem report. According to the doctor, the deceased would appear to have died of the cumulative effect of shock and haemorrhage due to three injuries sustained and injury No.1 is fatal in nature. The symptoms noted by her are as follows:
"Injuries:
1. A cut injury right side of neck about 18 cms x 12 cm x 10 cm severing blood vessels, muscles nerves and vertebral with spinal cord at c4 level.
2. A cut injury over right mandibular region about 10 cm x 5 cm x 4 cm fracturing the bone underneath.
3. A cut injury over right ear pinna about 4 cm x 1 cm.
4. A cut injury over anterior aspect of left shoulder about 6 cm x 4 cm x 3 cm.
5. A cut injury over left mammary region 2 cms below left collar bone about 9 cm x 5 cm upto bone depth fracturing 2nd 3rd and 4th ribs.
6. A cut injury middle of right forearm fracturing both bones and severing muscles, blood vessels and nerves □ leaving tag of a cut torn 4 cm in

width.
7. A cut injury (torn) about 12 cm x 6 cms upto bone depth lacerating the tendons and fracturing the bone underneath. The little ring and middle finger lacerated.
8. A cut injury 4 cm below left elbow fracture both bones severing muscles, blood vessels nerves  leaving a tag of skin with muscle about 3 cms width and 2 cms in thickness on medial aspect.
9. A cut injury left little finger about 3 cm x 2 cm bone depth fracturing it.
10. A cut injury right side of lower abdomen about 3 cm x 2 cm x 1cm.
11. A cut injury left side of lower abdomen about 6 cm x 2 cm peritoneal cavity opened. Small intestines protruding through it.
12. A cut injury over right knee about 6 cm x 4 cm x 3 cm.
Skull: Brain Normal. Thorax: Heart Chambers empty.
Lungs pale. Laceration in left lung upper lobs left lung collapsed. Abdomen: Stomach empty, other internal organs pale. P.M. concluded at 3.20p.m. On 30.8.2000.
Death could have occurred 6-8 hours prior to P.M.
Opinion as to cause of death:
The deceased would appear to have died of the cumulative effect of shock and haemorrhage due to the injuries sustained.
Fatal injury : Injury No.1"
On the dead body of D-4, the doctor found various symptoms as noted by him in Ex-P7, the postmortem certificate. The doctor is of the opinion that the deceased would appear to have died of cumulative effect of shock and haemorrhage due to the injuries sustained and injury No.1 is fatal. The following are the symptoms noted by the doctor on the dead body of D-4:
"Injuries:
1. A cut injury left side of chest  below the breast  starting from mid clavicular line  extending on to the back of chest about 30 cm x 10 cm. Opening the chest wall  collapsing the left lung and fracturing 6th to 8th ribs there.
2. A cut injury left side of face about 7 cm x 5 cm upto bone depth fracturing maxillary bone.
3. A cut injury left shoulder on poster aspect about 3 cm x 2 cm x 2 cms.
4. A cut injury just below injury No.3 about 3 cm x 2 cm x 2 cms.
5. A cut injury over right palm near the finger roots about 5 cm x 3 cm bone depth fracturing them (medial three).
6. A cut injury back of neck at l c3 level about 6 cms x 2 cm x 3 cm fracturing the bone C3.
7. A cut injury 2 cm above injury No.6 about 7 cm x 5 cm x 1 cm.
8. A cut injury 3 cm below injury No.6 about 4 cm x 2 cm x 1 cm.
Skull: Normal. Brain Normal. Thorax: Fracture of ribs (Torn) on left side left lung collapsed. Both lungs pale. Heart chambers empty. There was a cut injury anterior wall of left side about 3 cm x 1 cm.
Opening the cavity. Abdomen:Stomach empty. Other internal organs pale. P.M. concluded at 4.40p.m. on 30.8.2000.
Death would have occurred 8-10 hours prior to Post-mortem.
Opinion as to cause of death:
The deceased would appear to have died of the cumulative effect of shock and haemorrhage due to the injuries sustained.

Fatal injury : Injury No.1."
On the dead body of D-5, the doctor found various symptoms as noted in Ex-P9, the postmortem certificate. According to the doctor, the deceased would appear to have died of the cumulative effect of shock and haemorrhage due to the injuries sustained and injury No.1 is fatal. The symptoms as noted in Ex-P9 are as follows:
"Injuries:
1. A cut injury over neck at c4 level cutting vertebral C4 level with spinal cord, all major blood vessels and nerves veseles of neck  leaving a tag of skin about 5 cms in width anteriorly connecting the head to the body (length 32 cms  depth 12 cms.)
2. A cut injury 1 cm below right ear about 7 cm x 3 cm x 3cms.
3. A cut injury over right collar bone about 6 cm x 3 cm x 2 cm fracturing the bone.
4. A cut injury  middle of forehead about 2 cm x 1 cm x 1 cm.
5. A cut injury over right wrist about 4 cm x 3 cm x 2 cm.
Skull: Normal, Brain normal. Thorax: Heart chambers empty.
Lungs pale Abdomen Stomach empty. Other internal organs pale.
P.M. concluded at 5.55p.m. on 30.8.2000.
Death would have occurred 9-11 hrs prior P.M.
Opinion as to cause of death:
The deceased would appear to have died of the cumulative effect of shock and haemorrhage due to the injuries sustained.
Fatal injury : Injury No.1"

5. P.W.20 continued the investigation further by examining witnesses and recording their statements. From the place where the dead body of D-3 was lying, he recovered bloodstained earth and sample earth under a mahazar attested by witnesses. Likewise, bloodstained earth and sample earth were also recovered from the place where the dead bodies of Maheswari and Guruvathai were lying in the presence of witnesses under mahazars. He examined P.W.19 and recorded his statement. He handed over further investigation in this case as per the orders of his superior to P.W.21, another Inspector of Police. P.W.21 continued the investigation further in this case. He verified the investigation already done by P.W.20. He examined Gurusamy (D-2) and Lakshmanan (P.W.2)in the hospital on 10.9.2000 and recorded their statements. He came to know that all the accused have surrendered in Court and accordingly, he moved an application before the Court seeking police custody of all the three accused. Acco rdingly, police custody was given to him. When the accused were in police custody, he examined each one of them in the presence of P.W.s 8 and 12. Each one of the accused gave a voluntary confession statement, the admissible portions of which are Ex-P13, Ex-P14 and Ex-P15 respectively. Pursuant to the above referred to confession statements, under Exs-P43, P44 and P45, M.O.s 1, 2 & 3 came to be recovered respectively. The accused were then surrendered before the Court. He came to know that Gurusamy taking treatment in the Government Hospital died on 16.9.2000. He conducted inquest over the dead body of Gurusamy in the hospital in the presence of panchayatars and witnesses and prepared Ex-P46, the Inquest Report. He sent a requisition for postmortem to be conducted on the dead body of Gurusamy. P.W.7 is the doctor, who did postmortem on the dead body of Gurusamy on receipt of Ex-P11 requisition. During postmortem, he

found various symptoms on the dead body as noted in Ex-P12 , the postmortem certificate. The Doctor is of the opinion that the deceased would appear to have died on account of cut injury on the right side of back. The symptoms noted by the doctor are as follows:
"Injuries noted:
1. Sutured wound (sutures both ends) (surgical procedure, ICD), 4 x 1 = cm x viscera depth close to the right nipple.
2. Vertically oblique (Sutured and sutures removed) cut injury, 10 cm long x lung deep, on the middle of right side of back. On dissection it is lung deep. The cut injury has entered the thoracic cavity right side through the space between 4th and 5th ribs on the right side (back). Fourth rib on the right side cut in its back (course of cut injury). This injury cuts the base of right lung which is found collapsed. Right thoracic cavity contains 250 ml of puurlent material. Right side of diaphragm and upper part of right lobe of liver found lacerated 10 x 5 x 4 cm. Peritoneal cavity contains 300 ml of seropurulent fluid.
3. Abrasion 4 x 1 cm right forearm.
Heart: Normal. Coronaries : Patent. Hyoid Bone: Intact
Lungs: Congested. Stomach: Contains 30 ml of mucosal fluid. Nil Specific Smell. Mucosa: Normal. Liver, Spleen and kidneys: C/s. Congested. Small Intestine: Contains 30 ml of bile stained fluid. Nil specific smell.
Mucosa: Normal. Bladder: Normal.
Opinion as to cause of death:
The deceased would appear to have died of complication of cut injury on the right side of back."
P.W.17 is the police constable, who was present throughout postmortem on D-2. P.W.21 continued the investigation further by examining the doctor, who did postmortem on the body of D-2. He sent the case properties to the Court with a requisition to subject the same for chemical examination. P.W.10 is the Magisterial Clerk, who speaks about the receipt of the case properties and the requisition Ex-P22 given by the Investigating Officer to subject the same for chemical examination. Along with the Court's letter Ex-P23, the case properties were sent to the laboratory and Exs-P24 and P25 are the Chemical Examiner's Report and the Serologist's Report respectively. The accused were also involved in a case of single murde r in Crime No. 308/94 and in a case of double murder in Crime No. 139/98. A-1 and A-2 in the present case were the accused in Crime No. 308/94 while A-3 and another were the accused in Crime No. 139/98, which is a double murder crime. Ex-P47 is the printed First Information Report relating to Crime No. 139/98. After completing all

the other legal formalities, P.W.21 filed the final report in Court against the accused for offences under Section 302 and Section 307 r/w Section 34 I.P.C.

6. When the accused were questioned under Section 313 Cr.P.C. on the basis of the incriminating materials made available against each one of them, they denied each and every circumstance put up against them as false and contrary to facts. A-1 would state that he had been implicated in a false case and that about 20 persons came and attacked him. A-1 would state that A-2 and A-3 had gone out for work and on hearing some noise, he came out and he was attacked by the villagers. A-2 and A-3 would state that

they had gone out for work and they have been falsely implicated in this case. They examined one witness on their side as D.W.1 besides marking three exhibits as Exs-D-1 to D-3. D.W.1 in his evidence would state that he was not in the village on the date of occurrence and he came back only on the next day morning and nobody informed him as to how the occurrence took place. Ex-D1 is the application filed by the Investigating Officer while the accused were surrendered before the Court after expiry of police custody. Exs-D2 and D3 are the house tax receipts, both standing in the name of one Arjunan. Ex-D1 would show that when the Court questioned the accused at the time of their surrender, each one of them had stated that their signatures were taken in a blank white sheet under threat.

7. Mr.O. Venkatachalam, learned counsel appearing for the appellants supported by Mr.N. Doraiswamy, would submit as follows: The occurrence had taken place in a sudden quarrel. There is evidence to show, namely P.W.s 2 and 3, that A-1 was assaulted on the head and therefore, the prosecution witnesses and the deceased are the aggressors. If the case of the prosecution is viewed in that angle, then it can be safely concluded that only in retaliation, the accused had responded in the manner as spoken to by the prosecution. In any event, the learned counsel would submit that on facts established and the crime shown to have been committed, death sentence is not called for. Without prejudice to the above submissions, the learned counsel, by taking us through the oral evidence of P.W.s 1 to 3 would also request us to disbelieve them since, all of them are thickly related to the deceased and therefore, in the absence of corroboration from independent sources, it would not be safe to act upon their evidence. The mere fact that all the witnesses and the deceased have gone to the village of the accused itself would show that they have gone there with a pre-plan to attack.

Mr.I.Subramanian, learned senior counsel as State Public Prosecutor, while replying to the arguments of the learned counsel for the appellants, would submit that in this case, the accused have admittedly surrendered before the Court on 14.9.2000 and at that time, none of them including A-1 had complained to the Magistrate that all or any of them came to be attacked by any one of the witnesses or the deceased. Though P.W.s 2 and 3 had given a snap answer during the course of their examination in Court that P.W.2 attacked on the head of A-1 with a stick, yet, a reading of the evidence of the Investigating Officer P.W.20 would show that none of the witnesses examined during investigation told him that A-1 came to be attacked by P.W.2. In any event, there is no medical evidence before the Court, either from a Government doctor or a private doctor, to show that A-1 had sustained any injury at all in the course of the same transaction. There is also no oral evidence on the side of the defence that he came to sustain the injuries as argued before this Court now. Even assuming for a minute without conceding that A-1 came to be attacked by P.W.2, yet, there is no justification whatsoever, for killing so many on the prosecution side namely five, out of whom, two are women. There is no room at all, according to the learned State Public Prosecutor, to disbelieve P.W.s 1 to 3 and by taking us through the entire evidence, it is submitted by the State Public Prosecutor that the evidence of each one of the witnesses stands fully corroborated by the evidence of other witnesses and it would be impossible for this Court to

disbelieve any of them. As far as the sentence imposed namely death sentence, the learned State Public Prosecutor, invited our attention to the earlier involvements of the accused as referred to in the evidence of P.W.21 and by bringing to our notice the other circumstances available namely, the manner in which innocent people were killed for no justifiable reason and the brutal manner in which each one came to be attacked, submitted that the conduct of the accused definitely warrants extreme punishment of death. The learned State Public Prosecutor would also submit that, in the context of the earlier crimes in which the accused are shown to have been involved,(these are cases where murders have been committed), it is clear that the accused have a tendency to commit fatal acts one after the other and therefore, if the sentence is reduced to one of life imprisonment by this court, then when they are released from jail at a later point of time, they would definitely repeat the act and that they are a real menace to the society. On instructions from the Police Officer in Court, the State Public Prosecutor would submit that the acquittal of the respective accused in the earlier referred to crime numbers was on the basis of the witnesses turning hostile and they turned hostile due to the threat given by the respective accused in the earlier cases.

8. Having regard to the arguments advanced by the learned counsel for the appellants and the learned State Public Prosecutor, we perused the entire materials on record with utmost care and caution. Maheswari, since deceased was given in marriage to A-3 about 7 or 8 months prior to the occurrence and it appears all was not well in that married life. Therefore, as is expected of a daughter in distress, she is shown to have taken shelter under her father Muthusamy -D-1. As usual, the elders tried to pacify her and in fact, pacified her and sent her to live with A-3 in her matrimonial abode. Even then, nothing was moving right as far as poor Maheswari was concerned and it has come out on record that A-3 was a constant and consistent source of problem for Maheswari to lead a peaceful life. Once or twice, Maheswari had come home and informed her father Muthusamy, since deceased. P.W.5 is the junior paternal uncle of the accused. We have already stated that the accused are brothers. Therefore, Muthusamy sought the help of P.W.5 to sort out the problem between A-3 and D-4. A-3 was insisting that his wife must come on her own to his house while D-1 was insisting that A-3 must come home and take his wife back. Ultimately, A-3 succeeded in his stand and Maheswari was left in the house of A-3. Even thereafter, there was no peace in her life and when once Muthusamy and Guruvathai, being parents of D-4, came to see her, she stated that it is impossible for her to live any more in her house at Thalaikattupuram as day in and day out, she is being subjected to extreme cruelty. Rightly, in our opinion, both told their daughter to stay a few more days there and assured her that they would come back with the elders in the village and sort out the problem failing which, as a last resort, a complaint could be lodged with the Police. Only in that background, Muthusamy, Gurusamy, Sundaramoorthi, Guruvathai along with P.W.s 1 to 3 and a few more travelled in the van driven by P.W.4 leaving their village around 4 a.m. on 30.8.2000. All of them reached Kovilpatti around 7 or 7.15a.m. and after having a cup of coffee, they went to the house of A-1 and the vehicle was parked a little away from the house of A-1. Then P.W.1 had gone to get P.W.5. Others were stationary during that time. When P.W.s 1 and 5 were coming back towards the house of A-1, during that walk, they were discussing as to and in

what way the matter could be resolved. It may be true that P.W.5 turned hostile. Nonetheless, the presence of D-1, D-2, D-3 and D-5 along with the witnesses are spoken to by P.W.4, the driver, who drove the van in which the prosecution party and the four deceased referred to above travelled on that fateful day from their village to Thalaikattupuram. Therefore, we hold on the evidence of P.W.4 coupled with the oral evidence of P.W.s 1 to 3 that the prosecution had definitely established that the witnesses namely, P.W.s 1 to 3 along with D-1, D-2, D-3 and D-5 were in the scene of occurrence village. When P.W.s 1 and 5 were talking inside the house of A-1 with A-3 ( probably, the conversation might have been as to how best the problem between A-3 and his wife Maheswari (D4) could be solved), a commotion appears to have arisen outside the house and P.W.1 heard somebody shouting from outside the house "stab, cut". This made A-3 to take up an Aruval from his house and run out. P.W.1 followed him and at that time, he saw D-1 running away being chased by A-1 and A-2. His evidence is that all the time, when P.W.s 1, 5, and A-3 were talking inside the house, A-1 and A-2 were outside the house armed with weapons. Therefore, it is clear that A-1 and A-2 were prepared for the attack, if such an eventuality arose. As referred to in the earlier portion of the judgment when we were narrating the facts, D-1 was chased by A-1 and A-2 and a little later by A-3 and all of them indiscriminately attacked him resulting in his instantaneous death. Then, P.W.2, who is the younger brother of D-1 intervened and he was also attacked. D-2 is none else than another brother of D-1 and as is natural, on seeing his brother being attacked, he also stepped in and he was also fatally attacked by all the three accused indiscriminately. However, he survived in that place only to meet his end after a few days in the hospital. Thereafter, the fatal attack on D-4 came to take place, once again by all the accused indiscriminately cutting her and this made D-3, who is the brother of D-4 to intervene to help her and the mindset of the accused at that time did not al low them to spare even D-3 and he was also attacked fatally by each one of them indiscriminately resulting in his instantaneous death. To complete the cruel act, they attacked D-5, who was running for safety and she also died on the spot. The evidence of P.W.s 1 to 3 consistently and cogently establishes the manner in which each one of the victims including P.W.2 came to be attacked by A-1 to A-3. The scene of occurrence cannot be disputed at all since the Observation Mahazar and the recovery of bloodstained earth and sample earth coupled with the Chemical Examiner' s Report and the Serologist's Report establish that the occurrence had in fact, taken place just near the house of A-1 as spoken to by the witnesses. The medical evidence in the form of P.W.6, who did postmortem on D-1, D-3, D-4 and D-5 coupled with the postmortem reports namely, Exs-P3, P5, P7 and P9 and the medical evidence of P.W.7, who did postmortem on the dead body of D-2 coupled with Ex-P12, the postmortem report leaves no room at all to doubt that the cause of death is due to homicidal violence. P.W.2 also had been treated by P.W.6 and the wound certificate is Ex-P10. Therefore, there is medical evidence in total corroboration to the cause of death of all the five victims in this case besides the grievous injuries sustained by P.W.2. Looking from any angle, we have no material in the evidence of P.W.s 1 to 3, which would enable us to doubt their evidence either in toto or in part. In other words, the evidence of P.W.s 1 to 3 is complete on all aspects regarding the occurrence proper resulting in the death of five and resulting in P.W.2 receiving grievous injuries. The fact that the accused armed with deadly

weapons chased the unfortunate victims and attacked them indiscriminately besides causing various injuries on P.W.2 including two grievous injuries would show beyond the pale of controversy that the only intention in their mind was to eliminate the entire family for no justifiable cause and therefore, there cannot be any difficulty at all in holding that all the accused had shared the common intention to kill each one of the unfortunate victims in this case. The manner in which P.W.2 also came to be attacked by the accused bristles with the sharing of the common intention in their mind. Consequently, we are in entire agreement with the finding rendered by the learned Sessions Judge that the accused are definitely guilty of the offences referred to earlier for which they stand convicted.

9. The only question that is finally to be decided is the nature of sentence to be awarded. It is no doubt true that five persons have lost their lives on account of the brutal attack mounted on them by the appellants. Law prescribes two types of punishment and the lesser of the two is life imprisonment. Under the provisions of the Penal Code, if death sentence is to be given, then the Court must give reasons and no such duty is cast upon the Court if the lesser of the two punishments is imposed upon the accused. The learned counsel appearing for the appellants/accused strenuously pleaded before us at the conclusion of his arguments on 3.3.2003 to award lesser of the two punishments. He also submitted that the appellants will not seek any commutation or premature release if the sentence of death imposed upon them is modified into one of life imprisonment. We thought it prudent to give time to the counsel so that he can once again consult his clients and if instructed by them, can file a memo in Court to that effect and accordingly, the learned counsel requested time till day. Today, the counsel has filed a memo wherein it is stated that, "the appellants/accused pray for modification of death sentence into one of life sentence" and that "on instructions it is submitted that the appellants/accused undertake not to seek for premature release or commutation." After giving our anxious consideration as regards the sentence to be imposed on the facts of the case, though we felt that death sentence can be awarded to the appellants since, in our view, the case can be termed as one of the rarest of rare case, we ultimately decided not to award the said sentence of death in view of the undertaking given by the appellants through their counsel by filing a memo. In this connection, it will not be out of place to consider the judgment of the Honourable Supreme Court of India in Subhash Chander V. Krishan Lal & Others (JT 2001 (4) SC 444). The facts in the above case before the Supreme Court were that the accused, on being convicted, were sentenced to death by the Trial Court. On appeal, the High Court while confirming the conviction, modified the sentence of death into one of imprisonment for life. P.W.2 in the said sessions case filed an appeal before the Supreme Court with a grievance that the sentence imposed on the appellants in that case was inadequate on account of the desperate nature of the accused. During the course of arguments on behalf of the appellant before the Supreme Court, it was submitted by the counsel that if the desperate accused (A1) is not awarded death sentence, he is likely to eliminate the remaining family members of the deceased on account of his past conduct and behaviour and that to protect the lives of innocent surviving members, it is necessary to at least deprive A-1 of his life and the Supreme Court, on the said submission, expressed the view that the apprehensions expressed by the

senior counsel are not without substance. At that juncture, the counsel appearing for the respondents/accused submitted that the Court, instead of depriving A-1 of his life can pass appropriate orders to deprive the aforesaid accused person of his liberty throughout his life and on instructions submitted that the accused, if sentenced to life imprisonment, will never claim his premature release or commutation of his sentence on any ground and the Supreme Court recorded the said submission of the counsel and thereafter, dismissed the appeal on the undertaking given by the accused that he will not seek premature release or commutation.

10. When we take into consideration, the principles which weighed in the mind of the Supreme Court in the above case, it cannot, but be said that the present case is one such and the appellants have also given an undertaking not to seek premature release or commutation by filing a memo. We see no reason as to why we should not accept the said undertaking given by the appellants through their advocate. Mr.O. Venkatachalam, learned counsel is present in Court and also submitted that the appellants have instructed him to plead for leniency in the matter of sentence and that they will not seek premature release or commutation of sentence on any ground at any point of time and that he has also filed a memo only on the instructions given by the appellants. We record the memo as well as the submission made by the counsel. In view of the undertaking given by the accused through the memo and in view of the submission made by the counsel, we are of the view that the sentence of death imposed upon the appellants/accused can be modified into one of imprisonment for life and accordingly, we modify the sentence of death into one of imprisonment for life with the rider that the appellants shall remain in prison for the rest of their life as observed by the Supreme Court in the above judgment and that they shall not be entitled to any commutation or premature release under Sections 432 and 433 Cr.P.C., Prisoners' Act, Jail Manual or any other statute and the Rules made for the purpose of grant of commutation and remissions. The appeal is disposed of with the above modification in sentence.

11. The memo filed by the appellants shall form part of the records. A copy of the memo shall be sent by the Registrar General to the Central Prison, Palayamkottai, where the accused are undergoing imprisonment for being incorporated in jail records relating to the concerned accused.

Index: Yes
Internet: Yes

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To

1. The Addl. Sessions Judge-cum-
CJM, Tuticorin.

2. -do- thro' the Prl. Sessions
Judge, Tuticorin.

3. The Dist. Collector,
Tuticorin.

4. The DGP, Madras.

5. The Public Prosecutor,
High Court, Madras.

6. The Superintendent of Central
Prison, Palayamkottai.

7. The Inspector of Police,
Ettayapuram Police Station,
Tuticorin.

((SCO LYRIX 6.1
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